

**KENNETH H. RYESKY, ESQ., STATEMENT FOR THE RECORD,  
UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON  
WAYS & MEANS, SUBCOMMITTEE ON HEALTH, HEARING ON  
TREASURY DEPARTMENT'S FINAL EMPLOYER MANDATE AND  
EMPLOYER REPORTING REQUIREMENTS REGULATIONS:**

**I. INTRODUCTION:**

The Health Subcommittee of the House Ways & Means Committee held a Hearing on 8 April 2014, where testimony was given by Mr. J. Mark Iwry, a Senior Advisor in the Treasury Department. Public comments were invited. This Commentary is accordingly submitted.

**II. COMMENTATOR'S BACKGROUND & CONTACT INFORMATION:**

Background: The Commentator, Kenneth H. Ryesky, Esq., is a member of the Bars of New York, New Jersey and Pennsylvania, and is an Adjunct Assistant Professor, Department of Accounting and Information Systems, Queens College of the City University of New York, where he teaches Business Law courses and Taxation courses. Prior to entering into the private practice of law, Mr. Ryesky served as an Attorney with the Internal Revenue Service ("IRS"), Manhattan District. In addition to his law degree, Mr. Ryesky holds BBA and MBA degrees in Management, and a MLS degree. He has authored several scholarly articles and commentaries on taxation and on Adjunct faculty, some of which are enumerated in Appendix A to this Commentary.

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Disclaimer: Notwithstanding various discussions between the Commentator and other concerned interested individuals and organizations, this Commentary reflects the Commentator's personal views, is not written or submitted on behalf of any other person or entity, and does not necessarily represent the official position of any person, entity, organization or institution with which the Commentator is or has been associated, employed or retained.

### III. ADJUNCT FACULTY AT AMERICA'S COLLEGES AND UNIVERSITIES:

Mr. Iwry's testimony briefly mentioned the current regulations' specific guidance for the treatment of Adjunct faculty<sup>1</sup> as employees.<sup>2</sup> In 2011, Adjunct faculty comprised approximately 50% of instructional faculty at American degree-granting institutions; the percentage had steadily risen from approximately 21% in 1970, and in all likelihood has continued to rise.<sup>3</sup>

The traditional rationale for employing Adjunct faculty is that it enables the college and the students to benefit from the valuable real world experience and expertise of individuals whose situations do not otherwise fit into the traditional full-time faculty mold.<sup>4</sup> This traditional rationale has shifted over the years to the use of Adjunct faculty as a cheap source of labor.<sup>5</sup>

But the fiscal "savings" realized by the colleges have come at a steep cost. The alienation of Adjunct faculty from the social systems that are America's colleges and universities has adversely affected their abilities to teach with full effectiveness. As noted in the course of the

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<sup>1</sup> Terms including but not limited to "Adjunct Faculty," "Part-Time Faculty," "Contingent Faculty," "Ad Hoc Faculty," "Special Lecturers," and Sessional Instructors" are used to refer to such individuals. This Commentary shall use the terms "Adjunct" or "Adjunct faculty," with the inclusive intent of embracing all such professional educators.

<sup>2</sup> The guidance on Adjunct faculty in the Final Regulations is set forth at length in the Preamble, VI(C)(1), published in 79 F.R. 8544, at 8551 - 8552 (12 February 2014) .

<sup>3</sup> U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS 2012 (Pub. NCES 2014-015, December 2013), Table 290 at p. 418 <<http://nces.ed.gov/pubs2014/2014015.pdf>>.

<sup>4</sup> See *Knight v. Alabama*, 900 F. Supp. 272, 302 (N.Dist. Ala. 1995); *Chang v. University of Rhode Island*, 606 F. Supp. 1161, 1227 (D.R.I. 1985) ("URI is prone to hire adjunct or specialized clinical faculty in fields (e.g., nursing, dental hygiene) laden with heavy clinical components."); Javier A. Galván, "Practical Suggestions to Internationalize the General Education Curriculum," *J. Hispanic Higher Educ.* 85, 89 (2006); James Stenerson, et al., "The Role of Adjuncts in the Professoriate," *Peer Review*, p. 23, at 24 (Summer 2010); see also Shawn G. Kennedy, "College Changing along with the Students," *N.Y. Times*, March 29, 1981, p. LI-21 (quoting Jay J. Diamond, a dean at Nassau County Community College: "Many of our adjunct faculty members are lawyers, businessmen and engineers and we consider their expertise and experience valuable ... They allow us to stay up-to-date.").

<sup>5</sup> See, e.g. *NLRB v. Cooper Union*, 783 F.2d 29, n. 3 at 32 (2d Cir. 1986), *cert. denied* 479 U.S. 815 (1986); *Barnabas v. Board of Trustees of the University of the District of Columbia*, 686 F. Supp. 2d 95, 99 (D.D.C. 2010); *Vandever v. Junior College District*, 708 S.W.2d 711 (Mo. App. 1986); Cheryl Halcrow & Myrna R. Olson, "Adjunct Faculty: Valued Resource or Cheap Labor?" *Focus on Colleges, Universities, and Schools* 2(1), p. 1 (2008); Robin Wilson, "Contracts Replace the Tenure Track for a Growing Number of Professors," *Chronicle of Higher Education*, June 12, 1998, p. A-12; Phyllis Bernstein, "Colleges Use More Adjuncts," *N.Y. Times*, November 17, 1985, p. LI-25).

rulemaking process for the regulations discussed by Mr. Iwry, the Affordable Care Act has only exacerbated the detrimental processes upon Adjunct faculty, thereby further disabling the American educational system.<sup>6</sup>

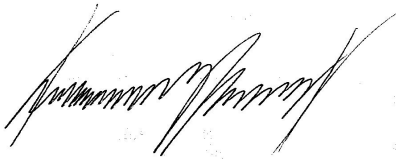
Against the foregoing background, the following two points are noted:

A. The work of Adjunct faculty differs from that of the typical employee in the American workforce. The teaching process begins long before the class roll call, and ends long after the class is dismissed.

B. The colleges and universities, having used the Affordable Care Act as their stated justification for cutting back on the assigned courses (and therefore the paychecks) of their Adjunct faculty members, are now benefiting from the Administration-decreed postponements of the Affordable Care requirements. The failure of the academic institutions to correspondingly postpone the cutbacks in the teaching loads and paychecks of their Adjunct faculty members constitutes bad faith on the part of the colleges and universities.

13 April 2014

Respectfully submitted,



Kenneth H. Ryesky, Esq.

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<sup>6</sup> E.g. IRS-2013-0001-0009 Dorey Diab, Stark State College, 14 January 2013 <<http://www.regulations.gov/contentStreamer?objectId=09000064811b90ab&disposition=attachment&contentType=pdf>>; IRS-2013-0001-0055, Yvonne Marie Brandon, 22 February 2013 <<http://www.regulations.gov/#!documentDetail;D=IRS-2013-0001-0055>>; IRS-2013-0001-0074, James Lynn Johnson, 7 March 2013 <<http://www.regulations.gov/#!documentDetail;D=IRS-2013-0001-0074>>.

## **APPENDIX A: RELEVANT PRIOR DISCOURSES BY THE COMMENTATOR:**

### **Published Articles:**

"Counting, Not Curtailing, Adjuncts' Work," *Chronicle of Higher Education*, 10 May 2013, p. A33, available at <<http://chronicle.com/article/Counting-Not-Curtailing/139031>>.

"Part Time Soldiers: Deploying Adjunct Faculty in the War against Student Plagiarism," 2007 BYU EDUC. & L. J. 119 (2007)  
<<http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1236&context=elj>>.

"Information & Instructional Technology: Bringing Adjunct Faculty into the IT Fold," Conference presentation, Instructional/Information Technology in CUNY, New York, 14 November 2003 [ERIC Document No. [ED490813](#)]  
<<http://files.eric.ed.gov/fulltext/ED490813.pdf>>.

### **Congressional Hearing Statements:**

Statement, Senate Committee on Finance Hearing: Impact of the Employer Mandate's Definition of Full-time Employee on Jobs and Opportunities, 28 January 2014,  
<<https://docs.google.com/file/d/0B1NeqTrEJoniWEI3SDhhWUtYTVE/edit>>

Statement, *Hearing on Tax-Related Provisions in the President's Health Care Law*, House Ways and Means Committee, Subcommittee on Oversight U.S. House of Representatives, 113th Congress, 1st Session, 5 March 2013,  
<[https://docs.google.com/document/d/1WuB3y0M45oAjVo7y2UDS\\_adfCeuGipR3UmaO7d4FDw/edit?pli=1](https://docs.google.com/document/d/1WuB3y0M45oAjVo7y2UDS_adfCeuGipR3UmaO7d4FDw/edit?pli=1)>

### **Rulemaking Hearing Statements:**

IRS Notice of Proposed Rulemaking RIN 1545-BL33 [REG-138006-12], 78 F.R. 218, Shared Responsibility for Employers Regarding Health Coverage (2 January 2013): Written Commentary, 28 January 2013  
<<http://www.regulations.gov/contentStreamer?objectId=09000064811ddea2&disposition=attachment&contentType=pdf>>; Oral testimony at rulemaking hearing (23 April 2013), unofficial transcript available from Tax Analysts, 2013 TNT 80-16, Doc 2013-9982.

New York State Commission on Higher Education, Hearing, 5 December 2007, Oral Testimony and Written Commentary; *Adjunct Faculty & Academic Excellence*, Written Commentary available at  
<<http://worldcat.org/arcviewer/4/AO%23/2010/12/23/H1293125405429/viewer/file120.pdf>>.